

GAMBLING ACT 2003:

LICENSED PROMOTER REGULATIONS

A consultation document issued by the Department of Internal Affairs inviting comments on proposals to make regulations concerning the activities of licensed promoters.

16 December 2004

Consultation on licensed promoter regulations

PURPOSE

The purpose of this consultation document is to invite your comments on proposals to make licensed promoter regulations under the Gambling Act 2003.

INTRODUCTION

The Gambling Act 2003 has replaced the Gaming and Lotteries Act 1977.

The Gaming and Lotteries Act 1977, and regulations under that Act, made provision for the licensing of persons or companies to act for reward as promoters of instant games, prize competitions, or lotteries. Such persons and companies are known as 'licensed promoters'.

The Gambling Act 2003 also makes provision for licensed promoters, and it maintains the existing licensed promoter regulations until new regulations are made.

BACKGROUND

Gambling Act 2003

The Gambling Act became law on 18 September 2003 (although many of its provisions did not take effect until 1 July 2004). The purpose of the Act is to:

- (a) control the growth of gambling; and
- (b) prevent and minimise the harm caused by gambling (including problem gambling); and
- (c) authorise some gambling and prohibit the rest; and
- (d) facilitate responsible gambling; and
- (e) ensure the integrity and fairness of games; and
- (f) limit opportunities for crime and dishonesty associated with gambling; and
- (g) ensure that money from gambling benefits the community; and
- (h) facilitate community involvement in decisions about the provision of gambling.

The Act includes various key measures to help achieve these objectives. However, it leaves a lot of the detail to regulations. Regulations can't change what the Act already says, but they do fill in the particulars.

Licensed promoters

This section briefly outlines the provisions of the Gambling Act 2003 relating to licensed promoters. It is not exhaustive and is not a substitute for the Act. Copies of the Gambling Act 2003 are available from Bennetts Government Bookshops, and copies can be downloaded from the Department's website: www.dia.govt.nz

Introduction

Under the Gambling Act 2003, a licensed promoter means a person who is granted a licence to promote a 'class 3' gambling activity on behalf of a 'society'. In general, 'class 3' gambling includes lotteries, prize competitions and other gambling for community fundraising purposes where prizes exceed \$5000 in value. A 'society' is a non-commercial association.

Society may engage licensed promoter

A society may pay a licensed promoter to promote licensed class 3 gambling on the society's behalf. The payment (or 'reward') made to a promoter must not exceed the amount applied to authorised purposes from the promotion or an amount prescribed by regulations. A society must not engage a licensed promoter unless their relationship is covered by a licensed promoter's agreement. Regulations may prescribe the content of such an agreement.

A licensed promoter must not promote a class 3 gambling activity on behalf of a society unless the society has obtained a class 3 operator's licence to conduct the gambling activity.

Applications for a licensed promoter's licence

In order to apply for a licensed promoter's licence, the applicant must be over the age of 18 years or be a company. Some people are not permitted to apply for a licence, including undischarged bankrupts, and those who have had a licensed promoter's licence cancelled within the previous five years.

Applications for a licensed promoter's licence must be made to the Secretary for Internal Affairs ('the Secretary') on the relevant standard form. A copy of the application must be sent to the police and a notice of the application must be published twice in an approved newspaper. A bond must accompany the application.

The police or any other person may lodge an objection to an application for licensed promoter's licence. The objection must be lodged with the Secretary within one month after the notice of the applications has been first published. It must relate to the suitability of the applicant to act as a licensed promoter. The Secretary must send a copy of any objection to the applicant.

The Secretary is required to investigate an applicant for a licensed promoter's licence and must refuse to grant a licence if the applicant is unsuitable. In determining a person's suitability for a licence, the Secretary must take into account a number of factors, including previous convictions, past compliance with gambling and racing legislation, and the applicant's financial position and credit history.

If the Secretary decides to refuse to grant a licence the Secretary must notify the applicant of the reason for the decision and of the right to appeal to the Gambling Commission against the decision. If a licence is granted, the Secretary must advise the police of the licensed promoter's details.

Bond

An application for a licensed promoter's licence must be accompanied by a bond given by a person who is nominated as a surety. The Secretary must decide whether or not to approve the person nominated as a surety, having regard to that person's ability to pay the bond on demand. Initially, the bond must be for the amount of \$50,000. From 18 September 2006 the bond must be for \$200,000.

The surety must pay the bond if the licensed promoter fails to meet a financial commitment to the relevant society, fails to pay prizes to winners of the gambling concerned, or breaches the obligations of a licensed promoter under the Act or the licensed promoter's licence.

In the event that a promotion fails, the Secretary is required to appoint an administrator to administer the bond paid by the surety. The administrator must consider and negotiate the payment of justified claims lodged against a licensed promoter.

Licensed promoter's licence

A licensed promoter's licence must include the following details:

- the name and business address(es) of the licensed promoter and any key person;
- the commencement date and expiry date of the licence; and
- the name and business address of the approved surety.

A licensed promoter's licence is subject to a number of conditions. One of those conditions is that the promoter must not be associated directly or indirectly with providing ancillary services or prizes in a promotion, unless they are provided free of charge. Another condition is that the promoter must not, during the period of the licence, be employed by a society to conduct class 3 gambling, except as a licensed promoter.

A licensed promoter's licence will be suspended if the surety withdraws the bond or if the surety is required to pay the bond in the event of a failed promotion.

A licensed promoter may apply to the Secretary for a renewal of his or her licence before it expires. An existing licence continues in force after its expiry date provided that the promoter has applied for renewal before the expiry date and the application has not been refused.

A licensed promoter may surrender his/her licence to the Secretary at any time. The surrender of a licence does not affect the promoter's obligations under the Act or the obligations of an approved surety. A licensed promoter's licence is not transferable.

Register of licensed promoters

The Secretary is required to maintain a register that records the name and contact details of licensed promoters. The register must be made available for inspection to members of the police and the public.

Suspension, cancellation, or refusal to renew a licence

The Secretary may suspend (for up to 6 months) or cancel a licensed promoter's licence if the promoter is no longer suitable to hold the licence or has failed to comply with the Act, the conditions of the licence, or the licensed promoter's agreement.

The Secretary is required to notify the licensed promoter of the reasons for a proposal to suspend, cancel, or refuse to renew a licence. The promoter must be advised of his or her rights and the procedure to be followed before the suspension or cancellation takes effect. The procedure is set out in the Act.

If the Secretary decides to cancel or refuse to renew a licensed promoter's licence, the Secretary must notify the promoter of the reasons for the action. The Secretary must also notify the licensed promoter of the right to appeal to the Gambling Commission against the decision, and the statutory process to be followed for an appeal.

A suspension, cancellation or refusal to renew a licence does not affect the obligations of an approved surety to pay a bond, if required, or the obligations of a promoter to operate a trust account (see below).

Appeal to Gambling Commission regarding licensed promoter's licence

A licensed promoter or an applicant for a licensed promoter's licence may appeal to the Gambling Commission against a decision of the Secretary to—

- refuse an application by the licensed promoter for the renewal of the licence; or
- refuse to grant a licensed promoter's licence to the applicant; or
- amend or revoke a condition of the licence, or add a new condition to it; or
- suspend or cancel a licence.

Generally, an appeal must be made in writing within 15 working days after the date of the notice of the Secretary's decision. The conditions of a licensed promoter's licence remain unchanged pending the outcome of an appeal.

Trust account

Licensed promoters are required to operate a trust account. A licensed promoter must pay into the account all money raised by, or paid to, the promoter to meet the expenses incurred on the society's behalf. All money to be held by the promoter on the society's behalf must also be paid into the account.

No person may withdraw money from the trust account except to pay it to the relevant society, or for the purpose of paying an account relating to the promotion.

A licensed promoter's trust account must be audited by a chartered accountant at the times and in the manner prescribed by regulations.

Licensed promoter must render account to society

A licensed promoter must render an account to the society that sets out, in full, the money that has been received by the promoter on behalf of the society, how the money has been applied, and any outstanding amounts that remain to be applied.

A licensed promoter who has rendered an account to a society may appropriate money from the trust account to satisfy the account if the appropriation is permitted by the licensed promoter's agreement with the society and by the Act.

A licensed promoter must pay all money held in the trust account on behalf of the society to the society within 7 days of a request from the society to do so; or if no request has been made, within 28 days if the promoter has ceased to act for the society.

Temporary licence

The Secretary may authorise a person to carry on the business of a licensed promoter for a period of up to 3 months should circumstances require. Circumstances include bankruptcy of the licensed promoter (or liquidation if the licensed promoter is a company).

Incomplete promotions

If a licensed promoter is unable or unwilling to complete the promotion of a class 3 gambling activity, the society may ask the Secretary to

- authorise the society to wind up the promotion;
- authorise the society to proceed with the promotion on its own behalf; or
- authorise the appointment of another licensed promoter to complete the promotion.

Regulations relating to licensed promoters

Regulations may be made under the Gambling Act 2003 to:

- prescribe the content of a licensed promoter's agreement.
- provide for the manner and timing of the audit of a licensed promoter's trust account.
- prescribe the maximum that may be deducted by a licensed promoter for expenses incurred in promoting class 3 gambling.
- prescribe the maximum reward that may be paid to a licensed promoter for promoting class 3 gambling.
- provide for the maximum number of class 3 gambling activities that may be conducted or promoted by a licensed promoter during the period of a licence:
- provide for the supervision of class 3 gambling activities promoted by licensed promoters by the police and gambling inspectors:
- provide for any other matters that are contemplated by, or necessary for, giving full effect to these regulations and their administration.

PROPOSED REGULATIONS

This section discusses proposals to make licensed promoter regulations under the Gambling Act 2003. The proposals do not envisage any significant departure from the current practice or the existing regulations for licensed promoters.

Your comments are invited on the following proposals.

Licensed promoter's agreement

Under the Gambling Act 2003, a society must not engage a licensed promoter unless their relationship is covered by a licensed promoter's agreement. The Act provides that regulations may be made to prescribe the content of a licensed promoter's agreement.

It is proposed to make regulations that maintain the content of the current licensed promoter's agreement. Thus, the agreement would include the following:

- The names and contact details of the parties to the agreement (i.e. the society and the licensed promoter).
- The maximum amount that the promoter shall be entitled to deduct for expenses and a list of the items that may be claimed as an expense.
- The reward that the promoter shall be paid by the society for conducting the class 3 gambling activity on the society's behalf.

Audit provisions

Under the Gambling Act 2003, a licensed promoter's trust account must be audited by a chartered accountant at the times and in the manner prescribed by regulations. It is proposed that regulations be made to retain most of the existing audit requirements:

- A licensed promoter must arrange for an annual audit of the licensed promoter's trust accounts to be conducted between 1 April and 30 June.
- A licensed promoter must arrange for an individual audit of the account(s) relating to each class 3 gambling activity conducted by the promoter within either 3 months after the result of a prize competition or lottery has been determined, or within 6 weeks after the last date for claiming a prize in an instant game.
- The Secretary may direct an immediate audit of a licensed promoters' trust account by the auditor of the trust account or by any other person nominated by the Secretary.
- A licensed promoter must forward monthly balances of the trust account(s) to the auditor that completes the annual audit.
- The auditor who completes the annual audit of the licensed promoter's trust account must not be the same auditor who completes the audits required at the completion of a class 3 gambling promotion.
- Auditors must examine the accounts and satisfy themselves that all trust account money has been duly and properly carried into the licensed promoter's trust accounts and that money in these trust accounts is properly accounted for.

- In the course of an audit, licensed promoters must supply to the auditor all the documents (including trust account statements, all butts, claimed prize-bearing tickets, unsold tickets, and full details of all tickets) that the auditor may require to conduct the audit.
- After each annual audit a report must be submitted to the Secretary by the auditor within two weeks of the audit's completion, containing:
 - a covering letter;
 - a statement as to whether:
 - (a) the trust account is in order;
 - (b) the promoter has forwarded monthly balances to the auditor;
 - (c) the account was ready within the prescribed period;
 - (d) the promoter complied with the auditor's requirements;
 - (e) the promoter has produced all receipts, unsold tickets, all claimed prize-bearing tickets, all tickets omitted from the instant game and the reason for any omission; and
 - (f) anything else the auditor considers necessary to report to the Department;
 - anything else requested by the Department in writing; and
 - a statutory declaration.
- Promoters shall pay the costs of the annual audit, and the costs of each individual audit unless there is a written agreement with the relevant society to the contrary.

Expenses deducted by licensed promoters

The Act provides that regulations may be made to prescribe the maximum that may be deducted by a licensed promoter for expenses incurred in promoting class 3 gambling. This may be expressed in any appropriate way including a specific amount or a percentage.

Under the Department's current policy, the maximum for expenses is 50% of the gross proceeds (GST inclusive) of ticket sales. The issue for consideration is whether a regulation should be made to fix a maximum level for expenses.

As noted earlier, a statutory condition of a licensed promoter's licence is that the promoter must not be associated directly or indirectly with providing ancillary services or prizes in a promotion, unless they are provided free of charge.

Reward paid to licensed promoters

The Act provides that the reward (or remuneration) paid to a licensed promoter for promoting class 3 gambling must not exceed the lesser of the amount applied to authorised purposes from the promotion, or an amount prescribed by regulations. This can be expressed in any appropriate way including a specific amount or a percentage.

Under the Gaming and Lotteries (Licensed Promoters) Regulations 1978, the fee paid to the licensed promoter must not exceed 10% of the gross proceeds of the sale of tickets in the instant game, prize competition or lottery. A society that pays in excess of this maximum commits an offence. It is permissible for a society to pay a lesser amount, as negotiated with the licensed promoter.

It is proposed that regulations be made to prescribe that the maximum reward that may be paid to a licensed promoter for promoting class 3 gambling be set at 10% of the gross proceeds (GST inclusive) of the sale of tickets in the gambling activity.

Maximum number of class 3 gambling activities

Regulations may be made to provide for the maximum number of class 3 gambling activities that may be conducted or promoted by a licensed promoter during the period of a licence.

It is not proposed to make a regulation under this provision.

Supervision of class 3 gambling activities

Regulations may be made to provide for the supervision of class 3 gambling activities promoted by licensed promoters by the police and gambling inspectors.

It is proposed that regulations be made stating that any member of the police or any gambling inspector may attend at the place and time at which the winner of a class 3 gambling activity conducted by a licensed promoter is determined. However, this would not apply to instant games.

Other matters

Regulations may be made to provide for any other matters that are contemplated by, or necessary for, giving full effect to the Act and its due administration.

It is not proposed to make a regulation under this provision.

Revocation

The Gaming and Lotteries (Licensed Promoters) Regulations 1978 will be revoked by the new regulations.

SUBMISSIONS

You are invited to make a submission on the proposed licensed promoter regulations.

Please note that all submissions may be made publicly available. Even if you request confidentiality, we might have to release your submission under the Official Information Act.

Please send us your submission by 4 February 2005.

Your submission can be sent in the following ways:

by email: stephen.reilly@dia.govt.nz

by fax: 04 494 0567
Attn: Gaming Policy

by post Gaming Policy (Level 10, SIB)
Department of Internal Affairs
P O Box 805
Wellington

By hand-delivery: Reception
Department of Internal Affairs
State Insurance Building
46 Waring Taylor Street
Wellington
(Attn: Gaming Policy, Level 10, SIB)

If you have any questions, feel free to contact Stephen Reilly on 04 4959303, or fax – 04 4940567, or email stephen.reilly@dia.govt.nz
